

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Doug Bauman,

Complainant,

Vs.

House Republican Campaign Committee  
(HRCC),

Respondent.

FINDINGS OF FACT,  
CONCLUSIONS, ORDER  
AND MEMORANDUM

The above-entitled matter came on for hearing on November 16, 2004, before a panel of three Administrative Law Judges: Allan W. Klein (Presiding Judge), Beverly Jones Heydinger, and John Ellefson.<sup>[1]</sup> The hearing record closed on November 16, 2004, at the close of the hearing.

Appearing on behalf of Complainant was Alan Weinblatt, of the firm of Weinblatt & Gaylord, PLC, 111 East Kellogg Boulevard, Suite 300, St. Paul, MN 55101.

Appearing on behalf of Respondent was Paul B. Kohls, Rider Bennett LLP, 333 South 7<sup>th</sup> Street, Suite 2000, Minneapolis, MN 55402.

**NOTICE**

This is the final decision in this case, as provided for by Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

**STATEMENT OF ISSUES**

1. Did the House Republican Campaign Committee (HRCC) violate Minn. Stat. § 211B.06, subd. 1 by preparing and disseminating campaign material that urged voters to "Re-elect" candidates who were not, in fact, incumbents?

2. If so, what remedy, if any, is appropriate?

Based upon the record in this matter, and for the reasons set out in the attached Memorandum, the panel concludes that Respondent did violate Minn. Stat. § 211B.06 by preparing and disseminating campaign material that contained false statements for use in four separate election campaigns. A fine of \$400 per violation is imposed, for a total of \$1,600.

Based upon the entire record, the panel makes the following:

**FINDINGS OF FACT**

1. On or about Thursday, October 21, 2004, Dax Bennett, an employee (or consultant) of the House Republican Campaign Committee (HRCC), prepared a two-

page, four-sided campaign brochure relating to Indian casinos and Governor Pawlenty's "fair share" plan. This brochure was intended to be used by a number of Republican candidates for the Minnesota House of Representatives. There were six places where a candidate's name was to be inserted, along with two places where the candidate's photo was to be inserted. When the brochure is opened, the dominant feature on the third page is a photograph of the candidate, along with a large box with a checkmark in it and the language "Re-elect \_\_\_\_\_ on November 2." The layout of that page, the font size, and the color used in the wording all give prominence to the box and the language "Re-elect \_\_\_\_\_ on November 2."

2. After creating the campaign brochure, Bennett inserted the name and photograph of Lynda Boudreau, the Republican incumbent in House District 26B. He then burned the document onto a CD, and gave a copy of the CD to Sarah Anderson, who was an employee of the HRCC who was working on a number of House campaigns.

3. Anderson serves as Executive Assistant to the Speaker of the House, but took a leave of absence from that position in order to work for HRCC on campaigns. She was responsible for 12 campaigns on a "full-time" basis, and an additional 51 campaigns on a "helping" basis. Her duties included fund-raising, preparing literature, advising candidates, and supervising field staff. During the 2004 campaign, Ms. Anderson worked on over 120 pieces of campaign literature for Republican candidates for the House.

4. On or about Thursday, October 21, Anderson printed out a copy of the brochure. She then highlighted the places where Boudreau's name appeared. She then used her computer to delete Boudreau's name and insert the names (and photographs) of each of her 12 candidates. Among the changes she made was to remove the name of Lynda Boudreau from the box on the third page, and insert the name of other candidates. Seven of her candidates were incumbents, but five were not. She did not change the language in the box other than changing the name, so that in each of the 12 brochures, the box continued to read "Re-elect \_\_\_\_\_ on November 2." For the seven incumbents, that was an accurate statement, but for the other five candidates, it was not.<sup>[2]</sup>

5. Anderson was well aware which of her 12 candidates were incumbents, and which were not. She knew that Jim DeRose, Paul Gazelka, Rod Hamilton and Lonn Kiel were not incumbents. She also knew that it was not appropriate to use the word "Re-elect" for the non-incumbents because it created a false impression. But when she was preparing the campaign brochure for her candidates and inserting her candidates' names into the check box on page 3, it did not occur to her to change the term "Re-elect." If it had occurred to her, she would have made the change. There is no indication in the record that Bennett warned her that she would have to change the "Re-elect" language for some of the candidates.

6. After Anderson had created the new brochures with the 12 candidates' names and photographs inserted, and burned them onto a CD, Bennett notified her that

a change would have to be made to some of the text on the front page of all of the brochures. Anderson went back to her computer, changed the language on the front page of each brochure, and then burned a new CD. She then took the CD to a printer for printing. The printer received the CD on Thursday, October 21.

7. Sometime between Thursday, October 21 and Saturday, October 23, the printer delivered “proofs” to Anderson for her approval. Anderson glanced at them, but did not review them carefully. She was primarily concerned about the color of the brochure and the framing. She was not concerned about the text because she believed it to be correct and she knew that since the printer had taken it straight from her computer PDF file, it could not be altered. Once she checked the color and framing, she approved the proofs and several thousand pieces were printed.

8. On the morning of Tuesday, October 26, the printer delivered the campaign material to a mail house, which addressed and sorted it, and on Wednesday, October 27, it was delivered to the post office for mailing. That day, October 27, was the last day that campaign pieces could be mailed by standard mail and be guaranteed to be delivered before November 2, election day. October 28 was the last day that campaign pieces could be mailed by first-class mail and meet the delivery deadline.<sup>[3]</sup>

9. On Friday, October 29, Anderson received a telephone call from Rod Hamilton, one of her 12 Republican candidates. Hamilton was concerned. He had just been contacted by a reporter from the Worthington Daily Globe. The reporter had informed Hamilton that Matt Entenza, the DFL leader in the House, was threatening to file a campaign practices complaint against Hamilton because a brochure urged voters to “re-elect Rod Hamilton on November 2” when, in fact, Hamilton was not an incumbent. Anderson informed Hamilton that the brochure was an independent expenditure prepared and paid for by the HRCC, and that Hamilton was not responsible for its contents. When Hamilton reached her, Anderson was in her car, on her way to Olivia to deliver literature to another candidate. She did not get home that night until after midnight. The next morning, which was Saturday morning, she got up and went out to do another literature drop, again getting home late. When she got home, she had a telephone call from the St. Cloud Times newspaper, inquiring about the same error in the literature piece for Jim DeRose. Anderson telephoned Representative Jeff Johnson, the Chair of the HRCC, and asked him to return the call to the St. Cloud Times. At that time, she told Johnson about the Rod Hamilton piece. The next day, Sunday, she checked all of her pieces for non-incumbents, and found that they all contained the same mistake.

10. Johnson admitted to the reporter from the St. Cloud Times newspaper that HRCC had made a mistake with respect to the campaign brochures.

11. The general election was held on Tuesday, November 2. The HRCC did not issue any sort of press release, hold a press conference, or contact any media (other than the two newspapers that had inquired) in an attempt to correct the erroneous literature. The St. Cloud Times did run a story mentioning the error on

Sunday, October 31, while the Worthington Daily Globe did not run anything until after the election.<sup>[4]</sup>

Based upon the foregoing Findings of Fact, the panel makes the following:

### **CONCLUSIONS**

1. Minn. Stat. § 211B.35 authorizes the Administrative Law Judges to consider this matter.

2. Minn. Stat. § 211B.01, subd. 2, amended in 2004, defines “campaign material” to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, ...” The color brochure at issue here is campaign material within the meaning of that statute.

3. Minn. Stat. § 211B.06, subd. 1, provides, in part: “A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect ... [or] promote ... a candidate for election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.”

4. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.06, relating to false campaign material, is clear and convincing evidence.<sup>[5]</sup>

5. The Complainant has shown by clear and convincing evidence that the HRCC violated Minn. Stat. § 211B.06, subd. 1, by preparing and disseminating brochures in four legislative districts that falsely characterized the candidates as incumbents when, in fact, they were not.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

### **ORDER**

IT IS HEREBY ORDERED: That the House Republican Campaign Committee is assessed a civil penalty of \$1,600.

Dated this 19th day of November 2004.

/s/ Allan W. Klein

ALLAN W. KLEIN

Presiding Administrative Law Judge

/s/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER  
Administrative Law Judge

/s/ John Ellefson

---

JOHN ELLEFSON

Workers' Compensation Judge

### **MEMORANDUM**

There is no dispute about the underlying facts of this matter. Sarah Anderson, on behalf of the HRCC, prepared campaign material that was false. The HRCC concedes that its use of "Re-elect" falsely implied that the candidate was an incumbent, when four candidates were not. The HRCC contends, however, that the error was unintentional; that Ms. Anderson did not knowingly include the phrase "Re-elect" in the campaign brochures of the four incumbent candidates. Rather Ms. Anderson simply overlooked the fact that when she sent the brochures to the printer and approved the proofs, that they included false information.

HRCC disputes that the statute was violated because no one at the HRCC was aware, at the time that the brochures were mailed, that they contained the false implication of incumbency. It was only after all the brochures had been mailed that HRCC learned that the mistake had been made. Ms. Anderson credibly testified that she would not have sent out the brochure with the word "Re-elect" if she had noticed it. The panel accepts that she was not aware of the error when she approved the printing of the brochures. She knew which of her candidates were not incumbents, but it simply did not occur to her, when she was preparing mailings, that their names shouldn't be placed immediately after the term "Re-elect."

What happened here, due to the "fill in the blank" nature of Bennett's computerized template, is that when Anderson inserted the names of her candidates, she simply did not pay attention to or think about the implication of the word "Re-elect." The fact that the labor was divided between Bennett and Anderson may explain how the error occurred, but cannot absolve the HRCC for distributing the erroneous material.

It was reckless for the HRCC to have sent these out without thoroughly proofreading them.

The statute has two parts. First, a person must intentionally participate in the preparation of campaign material that is false. There is no question that HRCC participated in preparing material that was false – all parties agree on that. The second part is that the person must either know that it is false or be operating with reckless disregard of whether it is false. In this case, the panel has wrestled with the second prong of the test. Is it sufficient for establishing a violation of Minn. Stat. § 211B.06 that a person know that candidate "X" is not an incumbent and that the word "Re-elect" can only be applied to an incumbent, or must the person be aware at the time they prepared and mailed the material that it contains a false statement?

Because we find the statute to be ambiguous, we resort to the factors contained in Minn. Stat. § 645.16. That statute provides as follows:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When the words of the law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretense of pursuing the spirit.

When the words of the law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the consequences of the particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

The “mischief to be remedied” and the “object to be attained” both point toward elections which are not tainted by false advertising. Voters do rely upon political advertisements to help them choose between candidates. The goal of statutes such as this is to assure that campaign material does not contain false statements.

The “consequences of a particular interpretation,” in this context, are important. If we did not penalize false statements that arose from “honest mistakes,” then we would have to determine whether or not a person was being truthful when they claimed “it was just an honest mistake.” On the other hand, if we penalize false statements without regard to how they occurred, then persons will be careful in the preparation of literature. They will proofread it, or have others proofread it. They will double-check their facts. They will have an incentive to be sure that it is correct before it is sent out. This, we believe, more accurately reflects the “mischief to be remedied” and the “object to be attained.”

We have examined the legislative history surrounding this statute, and do not find it to be helpful. The statute was slightly modified in 1998, as the result of a 1996 Court decision.<sup>[6]</sup> In that case, the Court held that the prior version of the statute was unconstitutionally overbroad, and that it could not be criminally enforced. The

Legislature responded by narrowing the scope of the statute to conform to the Court's holding. But the ambiguity described above was unchanged.

Applying the standards of Minn. Stat. § 645.16, we find the statute to be ambiguous, and therefore we attempt to ascertain the legislative intent by considering the enumerated factors. We conclude that false statements, even though the result of oversight rather than intent to deceive, were intended to be covered by the law.

In determining the appropriate sanction, the panel considered that the error was unintentional, but reckless, and that four separate legislative races were involved. Although it was a significant error, it is not likely that an error on

one piece of campaign literature affected a significant number of votes. Because of the proximity to the election, the HRCC did not attempt to mitigate the error, but for the same reason, the opponents were unable to counter it. Therefore, the panel concludes that a \$400 fine for each of four violations is appropriate.

**A.W.K., B.J.H., J.E.**

---

<sup>[1]</sup> Judge Ellefson is a workers' compensation judge, who was appointed to this panel pursuant to Minn. Stat. § 14.48, subd. 3(c).

<sup>[2]</sup> The complaint alleges that this error was in four brochures. Complainant was not aware of the fifth brochure until the hearing.

<sup>[3]</sup> Anderson was aware of these mailing cut-off dates, as she had received a copy of the post office's notice concerning timing of campaign mailings. The notice is in the record as Exhibit 2.

<sup>[4]</sup> Exs. H-1 and H-2, respectively.

<sup>[5]</sup> Minn. Stat. § 211B.32, subd. 4.

<sup>[6]</sup> See, Laws of Minnesota 1998, Ch. 376, and *State v. Jude*, 554 N.W. 2d 750 (Minn. Ap. 1996).